

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BRAVE BULK TRANSPORT LTD.,

07 Civ. 4546 (CM)

Plaintiff,

DECLARATION

-against-

SPOT ON SHIPPING LTD., a.k.a. SPOT
ON SHIPPING LTD. BVI, a.k.a. SPOT ON,
a.k.a. CLAYTON STAR COMPANY LIMITED
a.k.a. CLAYTON STAR and PHEW ASSET
MANAGEMENT LIMITED a.k.a. PEHW ASSET
MANAGEMENT LTD. and ZHANGGANG SHIPPING
LIMITED,

Defendant.

-----X

I, Garth S. Wolfson, hereby declare as follows:

1. I am a partner with the firm of Mahoney & Keane, LLP, counsel of record for defendant ZHANGGANG SHIPPING LIMITED (ZSL). Based upon my personal knowledge and my review of the file maintained by my office, I am familiar with the proceedings in this case.

2. Herewith attached are true copies of the following:

Exhibit F: Second Declaration on behalf of ZSL, by Zhang Jinglu, executed on September 25, 2007;

Exhibit G: Declaration on behalf of Zhangdian Iron and Steel Works, by Wang Zhijie, executed on September 21, 2007; and

Exhibit H: Excerpt from the Baltic Online Website.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 27, 2007
New York, New York

MAHONEY & KEANE, LLP
Attorneys for Defendant
ZHANGGANG SHIPPING LIMITED

By:


Garth S. Wolfson (GW 7700)
111 Broadway, Tenth Floor
New York, New York 10006
(212) 385-1422

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BRAVE BULK TRANSPORT LTD.,

07 Civ. 4546 (CM)

Plaintiff,

DECLARATION

-against-

SPOT ON SHIPPING LTD., a.k.a. SPOT
ON SHIPPING LTD. BVI, a.k.a. SPOT ON,
a.k.a. CLAYTON STAR COMPANY LIMITED
a.k.a. CLAYTON STAR and PHEW ASSET
MANAGEMENT LIMITED a.k.a. PHEW ASSET
MANAGEMENT LTD. and ZHANGGANG SHIPPING
LIMITED;

Defendant.

-----X

REGARDING THE ATTACHED TWO REMITTANCES UNDER PLAINTIFF'S ACTION AND ACCORDINGLY ISSUED MARITIME ATTACHMENT ORDER, I, ZHANG JINGLU, AS DIRECTOR AND SHAREHOLDER OF ZHANGGANG SHIPPING LIMITED AND ALSO THE DIRECTOR AND SHAREHOLDER OF ZHANGDIAN IRON AND STEEL (HONG KONG) CO., LTD., HEREBY DECLARE AS FOLLOWS BASIS MY PERSONAL KNOWLEDGE AND MY REVIEW OF THE FILE MAINTAINED BY MY OFFICE:

1. JUST AS THE DECLARED RELATIONSHIP BETWEEN ZHANGGANG SHIPPING LIMITED AND ZHANGDIAN IRON AND STEEL WORKS IN THE LAST DECLARATION FROM MYSELF, THESE TWO ATTACHED REMITTANCE WAS BOTH OCCURRED BECAUSE OF ZHANGGANG SHIPPING LIMITED'S SHIPPING SERVICE TO ZHANGDIAN IRON AND STEEL WORKS.
2. AS PER PAGE 1 OF EXHIBIT 1 HERE, FIRST ATTACHED USD 7,219.44 WAS DEMURRAGE MONEY OCCURRED AT LOADING PORT GOA, INDIA UNDER M.V. OINOUESSIAN LION VOY CHARTER (31/OCT-7/NOV, 2006 IN GOA) WITH BILL OF LADING ISSUED ON 7/NOV/2006. AS PER NORMAL PROCEDURE, THIS USD 7,219.44 SHOULD BE PAID BY LOADING PORT GOA'S LOCAL SHIPPERS "SESA GOA LIMITED", WHO IS SELLER OF ALL IRON ORE IN THIS SHIPMENT WITH ZHANGDIAN

IRON AND STEEL WORKS AS BUYER, FIRSTLY TO ZHANGDIAN IRON AND STEEL (HONG KONG) CO., LTD. AND THEN ZHANGDIAN IRON AND STEEL (HONG KONG) CO., LTD. REMITTED THE SAME TO ZHANGGANG SHIPPING LIMITED. HOWEVER, TO SIMPLIFY THE REMITTANCE PROCEDURE, ZHANGDIAN IRON AND STEEL (HONG KONG) CO., LTD. ISSUED A REMITTANCE INSTRUCTION TO SELLER AND REQUESTED SESA GOA LIMITED REMIT THE DEMURRAGE USD 7,219.44 TO ZHANGGANG SHIPPING LIMITED DIRECTLY.

3. AS PER PAGE 2 OF EXHIBIT 1 HERE, ZHANGGANG SHIPPING LIMITED INVOICED DEMURRAGE AND DISPATCH MONEY TOTALLY USD 1,375,270.30 OCCURRED UNDER 5 SHIPMENTS FROM FEBURARY TO JULY, 2007 COLLECTIVELY, EACH SHIPMENT BILL OF LADING DATES AND LOADING/DISCHARGE PORTS LISTED. ALL THESE SHIPMENTS WAS CARRYING IRON ORE BY ZHANGGANG SHIPPING LIMITED FOR ZHANGDIAN IRON AND STEEL WORKS. FINALLY, ZHANGDIAN IRON AND STEEL (HONG KONG) CO., LTD. REMITTED USD 1,000,000.00 AS MAIN PART AND INTENDED TO SETTLE THE REMAINED DEMURRAGE MONEY IN COMING DAYS, WHICH WAS FORCED TO CEASE DUE TO ATTACHMENT OCCURRED.
4. MOREOVER, AS PER PAGE 1 OF EXHIBIT 2 HERE, THE SLIP BETWEEN FORTIS BANK AND HSBC BANK SHOWS CLEARLY THAT USD 1,000,000.00 WAS REMITTED TO ZHANGGANG SHIPPING LIMITED BY "ZHANGDIAN IRON AND STEEL (HONG KONG) CO., LTD." WHICH IS SET UP IN HONG KONG BY ZHANGDIAN IRON AND STEEL WORKS. MAIN BUSINESS OF ZHANGDIAN IRON AND STEEL (HONG KONG) CO., LTD. IS OPENING LETTER OF CREDIT FOR IRON ORE IMPORT TRADE OF ZHANGDIAN IRON AND STEEL WORKS, REMITTANCE AND SETTLEMENT OF OCEAN FREIGHT AND OTHER RELEVANT EXPENSES.

PURSUANT TO 28 U.S.C. 1746, I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED ON SEPTEMBER 25, 2007
HONG KONG, CHINA


ZHANG JINGLU

ZHANGGANG SHIPPING LIMITED

張 銅 船 務 有 限 公 司

INVOICE

M/S: SESAGOA LIMITED

Ref: ZS703039

Date: 16-Mar-2007

M.V.: MV OINOUESSIAN LION
 B/L Date: 7-Nov-06
 L/Port: GOA, INDIA

Voy. No.: Z0608
 B/L Qty: 69,400 MT
 D/Port: QINGDAO, PRC

TYPE	PARTICULARS	AMOUNT (USD)
DEMURRAGE	LOADING PORT - SHIPPER PORTION	7,219.44
TOTAL AMOUNT DUE (USD)		7,219.44
E. & O.E.		

Please make payment / remit under the following banking instructions:

BANK NAME: HSBC HONG KONG
 BANK ADDRESS: 1 QUEEN'S ROAD CENTRAL,
 HONG KONG.
 A/C NO: 808-018188-838
 SWIFT CODE: HSBCHKHHKH
 IN FAVOUR OF: ZHANGGANG SHIPPING LIMITED
 WITH REF: MV OINOUESSIAN LION

For and on behalf of
 ZHANGGANG SHIPPING LTD.
 張 銅 船 務 有 限 公 司



Authorized Signature(s)

2015 * 10月 * 10月刊 * 10月刊

Station CANARA BATHS

3000 CANARA BANKS OF MESSAGE

RCVD *TRN/Session/BNR :199 9665 8A0154
RCVD *Our Address :CNRS INGAG-0 CANADA BANK
RCVD *
RCVD *Output Message Type :199 (G0A F0M0T0N D0P0R7M0T)
RCVD *Input Type :1036 FREE FORMAT MESSAGE
RCVD *MTR :070815/1497USNAXXX1174387250
RCVD *Sent By :TRV US NAXXX BANK OF NEW YORK
RCVD *
RCVD *Output Date/Time :070815/0823
RCVD *Priority :Normal
RCVD *MUR :C1507081437/6363
RCVD *
RCVD *L3: (108;C1507081437/6363)
RCVD *
RCVD *20 / TRANSACTION REFERENCE NUMBER
RCVD * C1507081437776360
RCVD *77 / NARRATIVE
RCVD * ATTENTION: LEGAL.
RCVD * OUR REF C1507081437776360.
RCVD * REGARDING YOUR SWIFT INSTRUCTIONS NUMBER
RCVD * FTG0708149727200 DATED 8/08/14, FOR LID 7,219-44
RCVD * VALUE 070814 IN SAME DAY FUNDS BY ORDER
RCVD * ADICONRB/NBZG FOR FURTHER CREDIT TO HSBC BANK
RCVD * USA 140 BROADWAY 12TH FL NEW YORK, N.Y. 10005-1180
RCVD * FOR THE ACCOUNT OF ZHANGDANG SHIPPING LTD
RCVD * REFERENCE 63450TT-399707.
RCVD * PLEASE BE ADVISED THE ABOVE TRANSACTION IS
RCVD * RESTRAINED TO A WITI OF MARITIME ATTALIMENT IN THE
RCVD * MATTER OF BRAVE MULK TRANSPORT LTD V. SPOT ON
RCVD * SHIPPING LTD LVI AKA SPOT ON AKA CLAYTON STAR
RCVD * COMPANY LIMITED AKA CLAYTON STAR AND PCHW ASSET
RCVD * MANAGEMENT LIMITED AKA PCHW ASSET MANAGEMENT LTD
RCVD * AND ZHANGDUN SHIPPING LIMITED. THE ATTORNEYS FOR
RCVD * THE PLAINTIFF ARE TISDALE LAW OFFICES. THEIR PHONE
RCVD * NUMBER IS 212-354-0025. THE DOCKET NUMBER IS 07-CV
RCVD * 4546 (CM). THE JUDGMENT AMOUNT IS 540,829.94USD.
RCVD * THANK YOU.
RCVD * REGARDS, MICHAEL FITZSIMMONS 315-765-4160, PLEASE
RCVD * RESPOND TO FTD-BLOCK ENTITY.
RCVD *
RCVD *MAC: Authentication Code
RCVD * SF554FF5
RCVD *CHK: CheckSum
RCVD * 6CE112E57555
RCVD *DLM: Delayed Message
RCVD *
RCVD *SAC: SWIFT Authentication Correct
RCVD *CCP:P: CBT Primary Copy
RCVD *
User requested copy from DMHS

1. *Leucosia* (Leucosia) *leucosia* (L.) *leucosia* (L.)

1231642

ZHANGGANG SHIPPING LIMITED

張鋼船務有限公司

INVOICE

M/S: ZHANGDIAN IRON AND STEEL (HONG KONG) CO LTD
 RM 2104C, 21/F., ADMIRALTY CENTRE TOWER,
 18 HARBOUR ROAD,
 HONG KONG

Ref: ZS707054

Date: 13-Jul-2007

M.V.:	Voy. No:	B/L Date:	B/L Qty:	L/Port:	D/Port:
MV MINERAL MONACO	Z0705	2-Jul-07	177,883 MT	PORT WALCOTT, WESTERN AUSTRALIA	QINGDAO, PRC
MV BELLFLOWER	Z0703	18-Apr-07	73,800 MT	GOA, INDIA	QINGDAO, PRC
MV ATA	Z0702	15-Apr-07	192,165 MT	PORT WALCOTT, WESTERN AUSTRALIA	QINGDAO, PRC
MV CHINA STEEL RESPONSIBILITY	Z0704	8-Apr-07	172,596 MT	PORT WALCOTT, WESTERN AUSTRALIA	QINGDAO, PRC
MV ETERNAL BRIGHT	Z0614	2-Feb-07	135,500 MT	GOA, INDIA	QINGDAO, PRC

M.V.	TYPE	PARTICULARS	AMOUNT (USD)
MV MINERAL MONACO	DEMURRAGE	LOADING PORT - RECEIVER PORTION	1,843,326.80
MV BELLFLOWER	DESPATCH	LOADING PORT - RECEIVER PORTION DISCHARGING PORT - RECEIVER PORTION	(31,981.11) (49,234.03)
MV ATA	DESPATCH	DISCHARGING PORT - RECEIVER PORTION	(166,956.60)
MV CHINA STEEL RESPONSIBILITY	DESPATCH	DISCHARGING PORT - RECEIVER PORTION	(134,790.66)
MV ETERNAL BRIGHT	DESPATCH	DISCHARGING PORT - RECEIVER PORTION	(65,105.06)
TOTAL AMOUNT DUE (USD)			1,375,270.30

E. & O.E.

Please make payment / remit under the following banking instructions:

BANK NAME: HSBC HONG KONG
 BANK ADDRESS: 1 QUEEN'S ROAD CENTRAL,
 HONG KONG.
 A/C NO: 808-018188-838
 SWIFT CODE: HSBCHKHHHKH
 IN FAVOUR OF: ZHANGGANG SHIPPING LIMITED
 WITH REF: MV MINERAL MONACO

For and on behalf of
 ZHANGGANG SHIPPING LTD.
 張鋼船務有限公司



Authorized Signature(s)

002 00:00 FROM:

002 00:00 FROM:

002 00:00 FROM: CREDIT MACHINES INC.

TO: ZHENEDIN

PUBLI

----- Instance Type and Transmission -----
 notification (Transmission) of Original sent to SWIFT (ACK): 0020
 Network Delivery Status : Network Ack
 Priority/Delivery : Normal
 Message Input Reference : 18C8 070916GEBAHKHAGCG42B5950291
 Message Header : FIN 103 Single Customer Credit Transfer
 Swift Input :
 Sender : BEBAHKHAGCG
 FORTIS BANK, HONG KONG BRANCH
 (GLOBAL COMMODITIES GROUP)
 HONG KONG HK
 Receiver : HSBCUS3XXX
 HSBC BANK USA, N.Y.
 NEW YORK, NY US

----- Message Text -----

20: Sender's Reference
 P07091601690P01
 230: Bank Operation Code
 CRED
 32A: Val Dte/Curr/Interbank Settld Amt.
 Date : 18 September 2007
 Currency : USD (US DOLLAR)
 Amount : \$1,000,000.00
 330: Currency/Instructed Amount
 Currency : USD (US DOLLAR)
 Amount : \$1,000,000.00
 390: Ordering Customer-Name & Address
 /B03064
 ZHANSDIAN IRON AND STEEL (HONG
 KONG) CO., LTD., RM 2104C,
 21/F, ADMIRALTY CENTRE TOWER,
 18 HARBOUR ROAD, HONG KONG
 530: Sender's Correspondent-Location
 /0000139378
 56A: Intermediacy Institution - BIC
 MAMDBUS33
 HSBC BANK USA, N.Y.
 NEW YORK, NY US
 57A: Account with Institution - BIC
 HSBCHKHHHKH
 HONGKONG AND SHANGHAI BANKING CORPORATION LIMITED, THE
 (ALL HK OFFICES AND HEAD OFFICE)
 HONG KONG HK
 59: Beneficiary Customer-Name & Addr
 /B08016168830
 ZHANGGANG SHIPPING LIMITED
 71A: Details of Charges
 DUR

----- Message Trailer -----

(MAC:3CBF3760)

(CHK:30AA3FFF962C)

PKI Signature: MAC-Equivalent

----- Interventions -----

Category : Network Report

Creation Time : 18/09/07 10:36:26

Application : SWIFT Interface

Operator : SYSTEM

Text:

{1:P21GEBAHKHAGCG42B5950291}(41{177;0709181838}{451:0})

End of Message

To : Steve

TOTAL 1.01

P.D.

P.D. 07/07/07

PCT-31-2002 (07/07/07) FROM:

AUSTIN/DOVER SWIFT - SWIFT MSGS (CUSTERS)

TO: ZHANGDIN

09/09/07-07:58:07

0CCFRN-2389-179602

URGENT

181 Authentication Result: Success
182 Instance Type and Transmission
183 Original received from SWIFT
184 Priority: Normal
185 Message Output Reference: 0756 02091906BAHKHHABCG4286131473
186 Correspondent Input Reference: 1936 070910MMDU33DXXX080812978
187 Swift Output Message Header
188 Sender: FIN 299 Free Format Message
189 HSBC BANK USA, N.A.
190 NEW YORK, NY, US
191 Receiver: DEBAKHHGCG
192 FORTIS BANK, HONG KONG BRANCH
193 (GLOBAL COMMODITIES GROUP)
194 HONG KONG, HK
195 MUR: 072610435820
196 Message Text
197 Transaction Reference Number: MM81490-1BSEP07
198 21: Related Reference
199 NONE
200 29: Narrative:
ATTENTION - REMITTANCE DEPT PLEASE BE ADVISED
THAT WE ARE HOLDING YOUR PAYMENT INSTRUCTIONS
DATED 18 SEP 07 FOR USD1000,000.00 ORG ZHANSIDIAN
IRON AND STEEL HONGKONG CO LTD TRAN
PO7091601690PO1 IN A HOLD-OVER ACCOUNT PURSUANT
TO A COURT ORDER RECEIVED BY THE LEGAL DEPT. WE
WILL CONTACT YOU IF WE NEED FURTHER INFORMATION
PLEASE QUOTE OUR FIELD 20 REFERENCE IN FIELD 21
ON YOUR FUTURE CORRESPONDENCE.
KIND REGARDS, OFAC PROCESSING UNIT HSBC GLOBAL
PAYMENTS AND CASH MANAGEMENT
HSBC BANK USA
CASE REFERENCE MM81490-1BSEP07

100: A3810389D7715

Message Trailer

PKI Signature: MAC-Equivalent

#End of Message

公 证 书

中华人民共和国山东省淄博市鲁中公证处

Notarization

(2007) Zi Lu Zhong Zheng Wai Zi, No.2845

This is to certify that the English translated copy of (2007) Zi Lu Zhong Zheng Wai Zi, No.2845 <<Notarization>> attached hereto is in conformity with the Chinese original copy.

Notary: Zhang Junhong (Signature)

Zibo Luzhong Notary Public Office (Seal)

Shandong Province

The People's Republic of China

September 24, 2007

张店钢铁总厂用笺

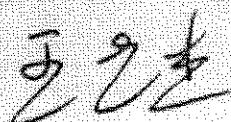
证 明

本人是张店钢铁总厂 (ZHANGDIAN IRON AND STEEL WORKS) 的法人代表兼董事长，在此证明，张钢船务有限公司 (ZHANGGANG SHIPPING LIMITED) 是经过张店钢铁总厂董事会通过决定，在 2007 年 2 月在香港注册成立。张店钢铁总厂是中国政府 100% 所有的国有企业。附上张店钢铁总厂营业执照复印件一份。

本人任职张钢船务有限公司主席 (PRESIDENT)，张店钢铁总厂对外经济贸易处处长张京禄先生 (MR ZHANG JINGLU) 任职张钢船务有限公司执行董事。

张店钢铁总厂

法人代表兼董事长：



2007 年 9 月 21 日

地址：淄博市张店区中心路176号

邮编：255007

<http://www.zdsteel.com>

E-mail: office@zdsteel.com

电话：0533-3152603

传真：0533-3183728

第一页

企业法人营业执照

张店钢铁厂

张店中心路176号

王志杰

人民币壹亿叁仟伍佰元整

全民所有制

制造(加工)销售

主营兼营

经营范围

资金形式

资产性质

经营范围

法定代表人

企业名称

住所

法定代表人

注册资本

经济类型

经济类型

经济类型

A horizontal strip of a Japanese woodblock print, likely a title page or a decorative border. It features stylized characters in a bold, blocky font. On the right side, there is a square seal with characters inside. The style is characteristic of Edo-period book illustrations.

注册号

卷之三

19. *Leucosia* *leucostoma* (Fabricius) *leucostoma* (Fabricius) *leucostoma* (Fabricius)

10. *Leucosia* (Leucosia) *leucostoma* (Fabricius) (Fig. 10)

卷之三

1. *Leucosia* *leucostoma* (Fabricius) (Fig. 1)

发 照 机 关

10. *Leucosia* (Leucosia) *leucostoma* (Fabricius) (Fig. 10)

年 月 日

证明书

(2007)淄鲁中证外字第2845号

兹证明前面的《证明》上张店钢铁总厂法人代表兼董事长王志杰的签名属实。

中华人民共和国山东省淄博市鲁中公证处

公证员

张翠红

二〇〇七年九月二十四日

Certification

My name is Wang Zhijie. And I am not only the legal representative but also the president and general manger of Zhangdian Iron and Steel Works. This is to certify that Zhanggang Shipping Limited was founded and registered in February, 2007 in Hong Kong with consent of the board of directors of Zhangdian Iron and Steel Works. Zhangdian Iron and Steel Works is one of the state-owned enterprises owned totally by Chinese government. Attached please kindly find one copy of the business license of Zhangdian Iron and Steel Works.

Moreover, I am the president of Zhanggang Shipping Limited, too. Mr. Zhang Jinglu, who is head of the international trade department of Zhangdian Iron and Steel Works, is the executive director of Zhanggang Shipping Limited.

ZHANGDIAN IRON AND STEEL WORKS

WANG ZHIJIE (signature)

Legal representative and the President

September 21, 2007

License of Business Corporation

Number of registration: 3703001800674

Name of the Enterprise: Zhangdian Iron and Steel Works

Registered Address: 176 Zhongxin Road, Zhangdian District, Zibo City

Legal person: Wang Zhijie

Registered funds: RMB135.17million Yuan only

(say RMB one hundred and thirty-five million, one hundred and seventy thousand Yuan only)

Nature of the Enterprise: under ownership by the whole people

Type of Enterprise: manufacture, (processing), and sale

Business scope: pig iron, steel, slag, limestone, steel billet, iron ore fines and lumps, cement and finished products, high-water materials, reducers, machinery, electric equipment, riveting and welding processing, exporting for pig iron, steel, cement, and relevant technology, importing for iron ore and machinery equipment and relevant technology, processing an order with supplied material and processing according to the supplied material, processing and sale for free-fire bricks, processing and sale for staple food and non-staple food, sale for alcoholic drinking and soft drinking (within the limits of the branches). (Some of the above must be approved and permitted by license if they need to be checked or permitted).

Period of Business: April 13, 1992 – September 17, 2016

Date of foundation: February 19, 2002

Authority of Issuing: the Commercial and Industrial Administration
Bureau of Zibo City

(Embossed Stamp Affixed)

Issuing Date: April 13, 1992

Date of annual checking: November 1, 2006

Notarization

(2007) Zi Lu Zhong Zheng Wai Zi, No.2845

This is to certify that the signature Wang Zhijie, Legal Representative and concurrently President and General Manager of Zhangdian Iron and Steel Works, affixed on the <<Certificate>> attached hereto, is found to be authentic.

Notary: Zhang Junhong (Signature)

Zibo Luzhong Notary Public Office (Seal)

Shandong Province

The People's Republic of China

September 24, 2007

证明书

(2007) 潍鲁中证外字第 2846 号

兹证明前面的 (2007) 潍鲁中证外字第 2845 号《证明书》
的英文译本内容与该公证书中文原本相符。

中华人民共和国山东省淄博市鲁中公证处

公证员

华军红

二〇〇七年九月二十四日

公证处

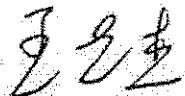
200709240236

STATEMENT

PURSUANT TO 28 U.S.C. § 1746, I DECLARE
UNDER PENALTY OF PERJURY UNDER THE LAWS
OF THE UNITED STATES OF AMERICA THAT THE
FOREGOING CERTIFICATION IS TRUE AND
CORRECT.

ZHANGDIAN IRON AND STEEL WORKS

WANG ZHIJIE

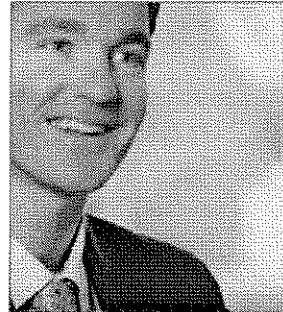


LEGAL REPRESENTATIVE AND THE PRESIDENT
EXECUTED ON SEPTEMBER 21, 2007, SHANDONG, CHINA

To ISDA or not to ISDA?

The proposed new FFABA contract is not to everyone's taste. Brian Perrott and Richard Merrylees of the commodities and international trade group at Hill Taylor Dickinson look at what it has to offer

The market is getting to grips with the proposed new Freight Market Information Users Group (FMIUG) drafted Forward Freight Agreement Brokers Association (FFABA) contract; although like marmite it seems that not everyone loves it. Some swear by it though, and the ranks of those who have adopted, and more importantly, already profited from it are growing.



Brian Perrott

The detractors, however, say that the old "simple" FFABA contract does the job well enough and that the new version is just, well, too long and complicated; how exactly does it benefit me? The short answer is that it could save you money and will help the shipping derivatives market grow. The long answer is that the FMIUG wanted a contract that would better protect each contracting party's rights in the event of a default, which in turn will reduce credit risk, attract more players to the market and create more liquidity; no bad thing we all agree.

Some large investors do not consider that the old FFABA satisfactorily safeguards their interests in the event of a default. Just ask those who suffered at the hands of Navitrans this summer - or even at the hands of Enron and Refco. We won't mention any names. So whilst the simplicity of the old FFABA contract is a selling point for some, it has cost others dear - and has even deterred some from trading FFAs at all.

So, how does the new proposed FFABA contract set about protecting the "victim" of a default? The answer is simply by incorporating the ISDA Master Agreement; which is incorporated as standard into virtually all other derivatives contracts worldwide. Here, however, lies the problem. Whilst the ISDA Master Agreement is probably the most complete and mutually protective standard form derivatives contract currently traded, some in the shipping world consider it overly legalistic and a little wordy.

In a nutshell, the most significant protective changes the "ISDA Master Agreement" has brought to the new proposed FFABA contract is the fact that (1) it clearly sets out the parties' contractual obligations; and (2) it spells out, clear as day, what events constitute a default - and what the innocent party is entitled to do in the event of a default in order to best protect its interests.

To some, the seemingly never-ending list of ISDA Master Agreement default events and contractual obligations make little sense in the context of a maritime contract and only confuses matters; after all, most of us know what a default looks and smells like in the first place and we shouldn't have to be told. However, a little (or a lot of) clarity never hurt anybody. In fact it will go a long way to help, particularly when one considers that an FFABA is after all more of a financial than maritime contract and subject to an increasingly varied and expanding market.

It may come as a surprise to some that, for example, the old FFABA contract fails entirely to deal with the parties' rights in the event of bankruptcy - a key event that one would expect to be covered in a financial contract. Needless to say, the new proposed FFABA contract now provides for termination in the event of bankruptcy, thereby simplifying the close-out process and potentially reducing exposure, particularly in jurisdictions where bankruptcy will not terminate a derivatives contract unless expressly provided for in the contract. Other striking examples of the old FFABA contract's shortcomings now cured by

the incorporation of the ISDA Master Agreement include its failure to deal with netting of payments and close-out netting.

The netting of payments is a concept we are all familiar with. Most financial contracts provide for it. It makes sense; setting off debits under one contract against credits under another can greatly reduce the administrative burden - and can also speed up payment. This is music to everyone's ears, surely? Critics are quick to point out, however, that too many interlinked contracts might lead to accounting chaos - and in some cases, abuse. Keep your contracts wholly separate, they sagely say. Whilst there may be some truth buried in this, parties should remember that they are free to tailor the netting of payments clause, or even delete it altogether, to best suit their contractual needs.

Whilst a netting of payments clause may be a step too far for some, the benefits of close-out netting should appeal to all. A close-out netting clause entitles an innocent party to offset sums owed to it before making a payment to a bankrupt counterpart. The alternative, in jurisdictions which do not permit close-out netting unless expressly provided for in the contract, would be that the innocent party would have to pay the bankrupt counterpart in full whilst receiving only a right to a pro rata distribution from the liquidator for monies owed in return; not good news for the innocent party.

Diehard critics of the new proposed FFABA contract have suggested that netting of payments and close-out netting are potentially not permitted in certain jurisdictions. However, they are permitted in most - and for those that want to be sure, the ISDA support network provides detailed first-rate legal opinions on enforceability in pretty much every significant jurisdiction worldwide.

The ISDA Master Agreement also tidies up the representations provisions in the original FFABA contract, which are broadly limited to status, powers and consent of the parties. The parties to the agreement will now also warrant that the contemplated transaction will not bring about an event of default or termination, that there is no relevant actual or pending litigation, that specified information given is accurate and that various tax representations are correct. Most will agree that these are comforting assurances to receive and for those with nothing to hide there should be no objection to giving them. Perhaps the single best demonstration of the FMIUG's zero-tolerance approach to risk in the new proposed FFABA contract is clause 12, which permits the parties to record all telephone calls made and received in connection with the trade.

From a legal point of view, it is hard to find fault with the new proposed FFABA contract, based as it is on the tried and tested ISDA Master Agreement; never before have FFA trading parties' rights been so well protected. However, in an industry which can be averse to change (consider that the most popular NYPE time charter form is approaching its 60th birthday), it remains to be seen how the new proposed FFABA contract will catch on commercially. Guy Campbell, head of ocean freight at Koch Carbon UK Ltd (and chairman of the FMIUG) in his interview published in this magazine last June, predicted that the OTC market will split into two, those that "do" ISDA and those that "do not".

One thing is certain though. Like it or not, the "ISDA Master Agreement" has finally caught up with the shipping world. It is here to stay in one form or another and will become increasingly relevant as the FFA market, estimated at \$25 billion this year, continues to grow and attract more mainstream investment. For those wanting to learn more about the new proposed FFABA, the FMIUG has produced a layman's guide, available upon request. More detailed information on the ISDA Master Agreement itself can be obtained on the ISDA website, or from a friendly lawyer (if you know one).

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